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AGREEMENT AND ASSIGNMENT

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RECORDATION NO. \_\_\_\_\_ Filed & Recorded

NOV 29 1972 - 1 00 PM

BETWEEN

INTERSTATE COMMERCE COMMISSION

GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION)

AND

MORGAN GUARANTY TRUST COMPANY OF NEW YORK

\_\_\_\_\_  
DATED AS OF NOVEMBER 21, 1972  
\_\_\_\_\_

Relating to the Conditional Sale Agreement,  
dated as of November 21, 1972, between General Motors  
Corporation (Electro-Motive Division) and Thomas F.  
Patton and Ralph S. Tyler, Jr., as Trustees of the  
Property of Erie Lackawanna Railway Company, Debtor,  
for 13 Diesel Electric Locomotives.

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## AGREEMENT AND ASSIGNMENT

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THIS AGREEMENT AND ASSIGNMENT, dated as of November 21, 1972, between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a Delaware corporation (hereinafter called the "Manufacturer"), and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, a corporation duly organized and existing under the laws of New York (hereinafter called the "Assignee").

WHEREAS, the Manufacturer and Thomas F. Patton and Ralph S. Tyler Jr., as Trustees of the property of Erie Lackawanna Railway Company, Debtor (such Trustees, and any successor Trustees, so long as they act in such capacity, and any Reorganized Company as defined in the Conditional Sale Agreement hereinafter referred to, are hereinafter called the "Railroad"), have entered into a Conditional Sale Agreement, dated as of November 21, 1972 (hereinafter called the "Conditional Sale Agreement"), covering the construction, sale and delivery by the Manufacturer and the purchase by the Railroad of thirteen (13) diesel electric locomotives (hereinafter called the "Locomotives"), bearing serial numbers of the Manufacturer 7381-1 to 7381-13, both inclusive, and road numbers of the Railroad EL 3669 to EL 3681, both inclusive, all as more fully provided in the Conditional Sale Agreement; and

WHEREAS, the Manufacturer has agreed to sell, and the Assignee has agreed to purchase, certain of the Manufacturer's rights in and under the Conditional Sale Agreement;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT WITNESSETH THAT, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

Section 1. Assignment. The Manufacturer hereby sells, assigns, transfers and sets over unto the Assignee, its successors and assigns, (a) all of the Manufacturer's right, title and interest in and to each of the Locomotives, when and as severally constructed and delivered, and upon payment to the Manufacturer of the amounts required to be paid under Section 4 hereof in respect thereof, (b) all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the rights of the Manufacturer to construct the Locomotives, to receive the payments provided for in Section 3B of the Conditional Sale Agreement, to reimbursement for taxes, assessments and charges

paid by it as provided in Section 6 of the Conditional Sale Agreement and to benefit from the Railroad's responsibility and indemnity provided for in Section 8 thereof) and in and to any and all amounts which may be or become due or owing by the Railroad to the Manufacturer under the Conditional Sale Agreement on account of the Railroad's indebtedness in respect of the deferred purchase price (as therein defined) of the Locomotives and interest thereon (except interest accruing with respect to the deferred purchase price of each Locomotive prior to the closing with respect thereto), and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded, and (c) all of the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement, other than those hereinabove excluded, without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with any of the provisions of, the Conditional Sale Agreement; provided, however, that this Agreement and Assignment shall not subject the Assignee to, or transfer, pass or in any way affect or modify, the liability of the Manufacturer or of any successor or successors to its manu-

facturing properties and business in respect of its obligations to the Railroad set forth in the Conditional Sale Agreement, or relieve the Railroad from any of its obligations to the Manufacturer under Sections 1, 2, 3B, 6, 7, and 8 of the Conditional Sale Agreement; it being understood and agreed that, notwithstanding this Agreement and Assignment, or any subsequent assignment pursuant to the provisions of Section 7 hereof, all said obligations of the Manufacturer to the Railroad shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer and any successor or successors to its manufacturing properties and business. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby irrevocably authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee or in the name of and as attorney (hereby irrevocably constituted) for the Manufacturer, to ask, demand, sue for, collect, receive and enforce payment of any and all amounts to which the Assignee is or may become entitled under this Agreement and Assignment and compliance by the Railroad with the terms and conditions on its part to be performed and kept under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee and subject to the obligations of the Railroad set forth in Section 21 of the Conditional Sale Agreement.

It is understood and agreed that the Assignee may, and intends to, enter into one or more participation agreements with one or more other parties pursuant to which such parties will participate with the Assignee in the financing herein provided for and in the interests and rights acquired hereunder in respect of the Locomotives.

Section 2. Covenants and Warranties. The Manufacturer covenants and warrants to the Assignee, and its successors and assigns, that

A. the Locomotives to be delivered under the Conditional Sale Agreement will have been constructed in full and complete accordance with the Conditional Sale Agreement, including the Specifications referred to therein; at the time of delivery of the same it will have legal title to each such Locomotive and good and lawful right to sell each such Locomotive, and the title to each such Locomotive will be free of all liens, claims, encumbrances and security interests of any nature whatsoever, except only the rights of the Railroad under the Conditional Sale Agreement and the rights of the Assignee hereunder; it will sell and deliver such Locomotives to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and, as of the date of the Bill of Sale referred to in Section 6B hereof, with respect to any Locomotive it will have legal title to each such Locomotive and good and lawful right to transfer such title and the title to each such Locomotive will be free of all claims, liens, encumbrances and security interests of any nature whatsoever, resulting from anything which it has done or omitted to be done or suffered to be done prior to the date of such Bill of Sale except only the rights of the Railroad under the Conditional Sale Agreement and the rights of the Assignee hereunder;

B. none of the Locomotives have been or will be constructed by the Railroad and

no material owned by the Railroad has been or will be used in the construction thereof;

C. it will, notwithstanding this Agreement and Assignment, perform and fully comply with each and all of the terms and conditions set forth in the Conditional Sale Agreement to be performed and complied with by the Manufacturer;

D. it will warrant and defend the title of the Assignee, and its successors and assigns, to each Locomotive against the demands of all persons whomsoever, based on claims originating prior to the delivery of such Locomotive by the Manufacturer to the Railroad under the Conditional Sale Agreement and on claims resulting from anything which it has done or omitted to be done or suffered to be done prior to the date of the Bill of Sale referred to in Subsection A of this Section 2, all subject, however, to only the rights of the Railroad under the Conditional Sale Agreement;

E. it will assume all responsibility for and will indemnify, protect and save harmless the Assignee, its successors and assigns, from any and all damages, demands, costs, charges, royalties, claims, suits, actions, judgments and expenses, including royalty payments and counsel fees, arising in any way out of charges of infringement of patents or other rights which may be alleged to cover the Locomotives, designs, materials, articles or parts thereof, or the construction or operation thereof, except for any design specified by the Railroad or any article or material specified by the Railroad and not manufactured by the Manufacturer, provided, however, that the obligations of the Manufacturer under this Subsection are subject to the conditions that the Assignee or its successors or assigns shall give prompt written notice to the Manufacturer of any claim of patent infringement presented to the Assignee or its successors or assigns and for which the Manufacturer assumes responsibility pursuant to this Subsection;

F. it has not delivered under the Conditional Sale Agreement any Locomotive to the Railroad or accepted any payment thereunder from the Railroad on account of the purchase price thereof and it will not do so until the Railroad has been duly notified of this Assignment in accordance with the provisions of the Conditional Sale Agreement, and it will promptly so notify the Railroad;

G. at the time of delivery of each Locomotive to the Railroad, there will be plainly, distinctly, permanently, prominently and conspicuously marked on each side thereof, by a metal plate or otherwise, the following legend in letters not less than one inch in height:

"Morgan Guaranty Trust Company of New York,  
Assignee, Owner";

H. it will from time to time and at all times, at the request of the Assignee, or its successors or assigns, execute, acknowledge and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions of this Agreement and Assignment and more perfectly to confirm the rights hereby assigned and transferred to the Assignee or intended so to be; and

I. the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by the Manufacturer for a valid consideration, it has no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and, assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is a valid and existing agreement, binding upon the Manufacturer and the Railroad in accordance with its terms and is now in full force and effect without amendment thereto.



Section 3. No Defenses. The Manufacturer covenants and agrees that in any suit, proceeding or action brought by the Assignee or its successors or assigns under the Conditional Sale Agreement the Manufacturer will save, indemnify and keep harmless the Assignee and its successors and assigns from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer, or the successor or successors to its manufacturing properties and business, in respect of the Locomotives or the manufacture, construction, delivery or warranty thereof or under the Conditional Sale Agreement or arising out of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer, or the successor or successors to its manufacturing properties and business; provided that the Manufacturer is given notice of such defense, set-off, counterclaim or recoupment and reasonable opportunity to defend against the same. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Manufacturer, and the successor or successors to its manufacturing properties and business, and shall

not be enforceable against the Assignee or its successor or assigns or any party or parties in whom title to the Locomotives or any Locomotives, or any of the rights of the Manufacturer under the Conditional Sale Agreement, shall vest by reason of this Agreement and Assignment or of successive assignments or transfers.

Section 4. Payments. The Assignee on each closing date (hereinafter called the "Closing Date" or "Closing Dates") fixed as provided in Section 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Section 3) of Locomotives shall pay to the Manufacturer in New York Clearing House funds an amount equal to the deferred purchase price (as defined in said Section 3) of such Group of Locomotives, but not exceeding \$337,598 for each of the thirteen Locomotives.

It is understood and agreed that the Assignee shall not be required to make any payment in respect of any Locomotive (i) excluded from the Conditional Sale Agreement pursuant to Section 1 thereof or (ii) delivered after December 31, 1972.

Section 5. Preliminary Conditions. The obligations of the Assignee to make any payment hereunder to the Manufacturer shall be subject to the receipt by the Assignee, on or before the first Closing Date,

of signed counterparts of each of the following:

A. the Conditional Sale Agreement and a copy of the Manufacturer's Specifications referred to in Section 1 of the Conditional Sale Agreement;

B. certificates or other evidences satisfactory to it of the filing, registering, recording and/or docketing of the Conditional Sale Agreement and of this Agreement and Assignment and of the payment of filing fees and taxes in connection therewith, all as required by Section 18 of the Conditional Sale Agreement;

C. the certificate of the Railroad referred to in the third paragraph of Section 4 of the Conditional Sale Agreement;

D. the applications, amendments thereto and the orders of public regulatory bodies, if any, referred to in Section 13 of the Conditional Sale Agreement;

E. an opinion of counsel for the Manufacturer, in scope and substance satisfactory to the Assignee and its special counsel hereinbelow named,

(1) as to the due incorporation and existence of the Manufacturer and its corporate power to carry on the business in which it is engaged,

(2) as to the due authorization, execution and delivery by the Manufacturer of the Conditional Sale Agreement and this Agreement and Assignment and the legality, validity and enforceability thereof, as against the Manufacturer, in accordance with their respective terms,

(3) as to the Assignee being vested with all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment;

F. an opinion of Messrs. Davis Polk & Wardwell, special counsel for the Assignee, in scope and substance satisfactory to the Assignee,

(1) as to the matters specified in Clauses (2) and (3) of the preceding Subsection E and in Subsection B of Section 13 of the Conditional Sale Agreement,

(2) as to the due filing of the Conditional Sale Agreement and this Agreement and Assignment wherever required in the United States of America for the proper protection of the Assignee's title to the Locomotives and of the Assignee's rights under each of said instruments,

(3) as to the jurisdiction of any Federal or New York State public regulatory body or bodies over the entering into or performance of the Conditional Sale Agreement, and, if any such public regulatory body or bodies has such jurisdiction, the sufficiency of any authorization or exemption thereof or consent thereto by each such public regulatory body, and

(4) as to such other matters incident to the transactions hereby contemplated as the Assignee may reasonably request;

it being understood, however, that in rendering said opinion said special counsel may, as to the corporate existence and powers of the Manufacturer and the Railroad and the sufficiency of the authorization, execution and delivery by either of them of any of the instruments referred to in said opinion, as to the authorization of the transactions pursuant to an order of the United States District Court for the Northern District of Ohio, Eastern Division, and as to the jurisdiction of any public regulatory body of any State (other than New York) over the entering into or performance of the Conditional Sale Agreement, rely upon the above-mentioned opinions of counsel for the Manufacturer and for the Railroad, respectively; and

G. a certified copy of an order filed October 30, 1972 issued by the United States District Court for the Northern District of Ohio, Eastern Division, approving the terms of the Conditional Sale Agreement.

In giving the opinions provided in Subsections E and F above, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to the enforceability thereof imposed by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforceability of creditors' rights generally, but no such opinion shall be so qualified to the extent that it relates to the proceedings currently pending under Section 77 of the Bankruptcy Act in the United States District Court for the Northern District of Ohio, Eastern Division, entitled "In the Matter of Erie Lackawanna Railway Company, Debtor" No. B 72-2838.

Section 6. Conditions of Each Closing. The obligation of the Assignee to make payment to the Manufacturer on any Closing Date with respect to any Group of Locomotives shall be subject to the prior receipt by the Assignee of each of the following:

A. An opinion of counsel for the Manufacturer stating

(1) that the Locomotives included in such Group have been validly and effectively delivered and accepted by the Railroad under the Conditional Sale Agreement,

(2) that title to such Locomotives was, at the time of their delivery and acceptance under the Conditional Sale Agreement, duly vested in the Manufacturer free of all claims, liens, encumbrances and security interests, except only the rights of the Railroad under the Conditional Sale Agreement and the rights of the Assignee hereunder and

(3) that title to the Locomotives in such Group has been validly vested in the Assignee, and that such Locomotives, at the time of delivery thereof to the Railroad, were free of all claims, liens, encumbrances and security interests, except only the rights of the Railroad under the Conditional Sale Agreement and the rights of the Assignee hereunder and that such Locomotives, as of the date of the Bill of Sale referred to in Section 6B, were free of all claims, liens, encumbrances and security interests of any nature resulting from anything which the Manufacturer has done or omitted to be done or suffered to be done, except only the rights of the Railroad under the Conditional Sale Agreement and the rights of the Assignee hereunder; provided, however, that in furnishing such opinion said counsel may rely, as to facts upon which such opinion is based, on certificates of responsible officers of the Manufacturer;

B. A Bill of Sale from the Manufacturer to the Assignee, evidencing the transfer to the Assignee of title to the Locomotives in such Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad the Manufacturer had legal title to such Locomotives and good and lawful right to sell such Locomotives and that title to such Locomotives was free of all claims, liens, encumbrances and security interests of any nature except only the rights of the Railroad under the Conditional Sale Agreement and the rights of the Assignee hereunder and warranting to the Assignee that, as of the date of the Bill of Sale, the Manufacturer had legal title to such Locomotives and good and lawful right to transfer such title and that title to such Locomotives was free of all claims, liens, encumbrances and security interests of any nature resulting from anything which the Manufacturer has done or omitted to be done or suffered to be done except only the rights of the Railroad under the Conditional Sale Agreement and the rights of the Assignee hereunder;

C. A Certificate of Acceptance of the character specified in Section 4 of the Conditional Sale Agreement with respect to the Locomotives in such Group;

D. A duplicate of the Manufacturer's invoice covering the Locomotives in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the price of such Locomotives;

E. A counterpart of a receipt from the Manufacturer acknowledging payment of that portion of the purchase price of the Locomotives payable pursuant to subparagraph B of Section 3 of the Conditional Sale Agreement;

F. The opinion of counsel for the Railroad referred to in Section 13 of the Conditional Sale Agreement; and

G. A certificate executed by an officer of the Railroad listing the insurance in effect with respect to the Locomotives (listing in each case the amounts of coverage, the carrier, the limitations of the policy, the risks insured against and the amounts deductible, if any) and stating that such insurance conforms to the requirements of Section 12 of the Conditional Sale Agreement.

**Section 7. Reassignment by Assignee.** The Assignee may at any time reassign all or any part, or from time to time reassign all or any part, of the rights assigned and transferred to it by this Agreement and Assignment, including the right to receive any payments due or to become due to it from the Railroad. In the event of any such reassignment, any such subsequent or successive assignee or assignees shall, to the extent of such reassignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

Section 8. Law Governing. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; but the Assignee shall be entitled to such additional rights arising out of the filing, registering, recording and/or docketing hereof as shall be conferred by the laws of any jurisdiction in which this Agreement and Assignment shall be filed, registered, recorded or docketed, including all rights conferred by Section 20c of the Interstate Commerce Act.

Section 9. Address. For the purposes of Sections 3F and 19 of the Conditional Sale Agreement, the address of the Assignee is 23 Wall Street, New York, New York 10015, Attention: Corporate Trust Department.

Section 10. Section Headings. The section headings herein are for convenience only and shall not affect the interpretation hereof.

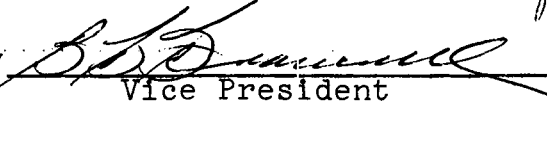
Section 11. Execution in Counterparts. This Agreement and Assignment may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Agreement and Assignment is dated for convenience as of November 21, 1972, the actual date or dates of the execution hereof by the parties hereto is or are, respectively, the day or dates stated in the acknowledgments annexed hereto.



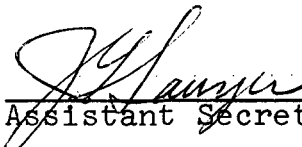
IN WITNESS WHEREOF, the Manufacturer and the Assignee have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, and their respective corporate seals to be hereto affixed and duly attested, as of the day and year first above written.

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

By


  
Vice President

Attest:


  
Assistant Secretary

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK

By

  
Vice President

Attest:

  
Assistant Secretary

STATE OF ILLINOIS     )  
                              :   ss.:  
COUNTY OF COOK        )

On this *24<sup>th</sup>* day of *November*, 1972, before  
me personally appeared B. B. BROWNELL, to me personally  
known, who being by me duly sworn, says that he is a  
Vice President of General Motors Corporation (Electro-  
Motive Division), that the seal affixed to the fore-  
going instrument is the corporate seal of said corpora-  
tion, that said instrument was signed and sealed on be-  
half of said corporation by authority of its Board of  
Directors, and he acknowledged that the execution of  
the foregoing instrument was the free act and deed of  
said corporation.

[Notarial Seal]

*Zula C. Clair*  
\_\_\_\_\_  
*Notary Public*

MY COMMISSION EXPIRES JULY 12, 1976

STATE OF NEW YORK     )  
                              :   ss.:  
COUNTY OF NEW YORK    )

On this 21st day of November , 1972, before me personally appeared S. Phelps Montgomery, to me personally known, who being by me duly sworn, says that he is a Vice President of Morgan Guaranty Trust Company of New York, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

*Josephine DeBarros*

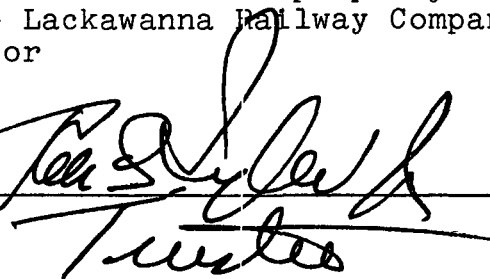
JOSEPHINE DeBARROS  
Notary Public, State of New York  
No. 43-0891575 Qual. in Richmond Co.  
Certificate filed in New York County  
Commission Expires March 30, 1973

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Thomas F. Patton and Ralph S. Tyler, Jr., as Trustees of the property of Erie Lackawanna Railway Company, Debtor, hereby acknowledge due notice of the assignment made by the foregoing Agreement and Assignment.

Dated: *November 27*, 1972

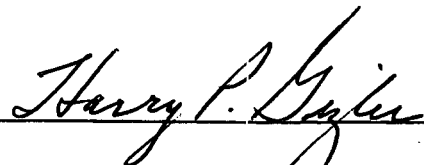
Thomas F. Patton and  
Ralph S. Tyler, Jr.,  
as Trustees of the property of  
Erie Lackawanna Railway Company,  
Debtor

By  \_\_\_\_\_  
Trustee

STATE OF OHIO            )  
                              : ss.:  
COUNTY OF CUYAHOGA    )

On this *27<sup>th</sup>* day of *November*, 1972, before me personally appeared RALPH S. TYLER JR. , to me personally known, who, being by me duly sworn, says that he is one of the Trustees of the property of Erie Lackawanna Railway Company, Debtor, that said Acknowledgment of Notice of Assignment was signed and sealed on behalf of said Trustees and that he acknowledged that the execution of said Acknowledgment of Notice of Assignment was the free act and deed of said Trustees.

[NOTARIAL SEAL]

 \_\_\_\_\_  
HARRY P. GIZLER  
NOTARY PUBLIC  
My Commission Expires July 24, 1974

NOTICE OF ASSIGNMENT

This is to advise that, effective April 1, 1976,  
12:01 a.m., the Financing Agreement described below has  
been assigned to the Consolidated Rail Corporation by the  
Trustees of:

Erie Lackawanna Railway Company  
Midland Building  
Baltimore, Maryland 21201

The Financing Agreement is a Conditional Sale  
Agreement, dated November 21, 1972,  
bearing the ICC recordation number 6816.

The payee's name and address is:

Morgan Guaranty Trust Company of New York  
23 Wall St.  
New York, New York 10015

This Notice of Assignment has been placed in the  
file of the ICC recordation number listed above and the entire  
assignment is contained in the ICC recordation file stamped  
in the margin of this assignment. A copy hereof will be  
promptly mailed to the payee listed above for distribution  
to the beneficial holder(s) of the Financing Agreement described  
in this Notice of Assignment.

Consolidated Rail Corporation